IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 10770 of 2003
Date of decision : 5.9.2006.

...

Parties Name

Neki Ram

..... Petitioner

vs.

The Deputy Collector, Adampur Water Services Division
and others.

.....Respondents

Coram: Hon'ble Mr. Justice S.N. Aggarwal

Present: Sh. Ashok Verma, Advocate for the petitioner.

Sh. S.S. Kharab, Assistant Advocate General,
Haryana for respondents No. 1 to 3.

Sh. S.S. Godara, Advocate for respondent No.4.

...

S.N. Aggarwal, J.

The orders passed by the Canal Officers under the Haryana Canal and Drainage Act, 1974 (in short 'the Act, 1974), are being challenged in this petition.

The facts of the case are that Neki Ram-petitioner is the land owner of village Ghursal, Tehsil Mandi Adampur, District Hissar. Om Parkash-respondent No.4 also owns two chunks of land in the same village. The large chunk comprised in Rect. No. 33 and 41

adjoins the land of the petitioner, while another parcel of his land comprised in Khata No. 108 is at a distance. Om Parkash-respondent used to take turn of water for his fields comprised in Killa Nos. 33 and 41 with the turn of water in his field comprised in Khata No. 108, while he used to irrigate his field comprised in Rect. No. 33 and 41 from the tube well of Dhanna Ram. This picture has been duly depicted in site plan Annexure P-1. Later on Om Parkash applied to the Deputy Collector (respondent No.1) for separating the turn of water for his fields comprised in Rect. No. 33 and 41 from the turn of water of his fields comprised in Khata No.108. The said officer vide order dated 7.1.2002 accepted the demand of Om Parkash-respondent No.4.

By accepting the turn of water for respondent No.4 for his fields comprised in Rect. No.33 and 41, after the turn of water of Prabhu, the water course was dug out from the land of the petitioner to supply the water to the fields of Om Parkash-respondent No.4 comprised in Rect. No. 33 and 41. This order was passed by the Deputy Collector without hearing the petitioner and it affected his legal rights. The petitioner filed an appeal before the Divisional Canal Officer Adampur Water Services, Division, Hissar (respondent No.2) under Section 55 (5) of the Act, 1974. The said appeal was dismissed by the said officer vide order dated 29.7.2002 (Annexure P-6). The petitioner filed further appeal to the Superintending Canal Officer, Bhakra Water Services, Circle No.1, Hissar, (respondent No.3). It was represented before him by Om Parkash-respondent No.4 that his turn of water has been fixed on the running water course which was

existing for the last 20 years. The said appeal was also dismissed by the said Superintending Canal Officer vide order dated 7.2.2003.

Hence, the present petition.

There is no dispute that the order dated 7.1.2002 was passed by the Deputy Collector, Adampur Water Services Division, Hissar on the application of respondent No.4 without hearing him. Therefore, this order in itself is not sustainable in law. Even Section 55(1) of the Act, 1974 which gives the power to the Deputy Collector for passing such order enjoins upon the officer to pass the order after making an enquiry into the matter and after giving a notice to all the persons interested. It reads as under :-

> "55. *Power of Deputy Collector to order use or distribution of water and settlement of differences.*- (1) The Deputy Collector may, if in his opinion it is necessary to do so, pass an order as to the use or distribution of water from a water-course amongst persons in any estate or a group of estates or in any holding or group of holdings in such estate or estates :
>
> Provided that no such order shall be passed by the Deputy Collector without making an inquiry into the matter and without giving a notice to all the persons interested that on a day to be named in such notice, he shall proceed to enquire into the said matter."

The same rule was interpreted by this Court in the judgment reported as **Murli Dhar Mehta vs. Yash Paul** 1998 (2) RCR (Civil) 401. However, the said judgment relied upon by the learned counsel

for respondent No.4 does not apply to the facts of the present case as it was noticed by this Court in the said judgment that no prejudice was caused to the other party. But in the present case, the petitioner has alleged that it caused prejudice to him, inasmuch as, the water course has been dug out from his land for supply water to the fields of respondent No.4, without hearing him.

The Superintending Canal Officer in his order dated 29.7.2002 has observed that the water course was already in existence, which supplies water to the fields of respondent No.4. But no site plan has been placed on the file to show if the sanctioned water course existed at the site in dispute. The site plan placed on the file by the petitioner does not show if any such water course existed prior to the passing of the impugned orders by the Canal authorities. No document was referred to by the Superintending Canal Officer while holding that the water course already existed at the site in dispute.

The impugned order dated 7.1.2002 was passed by the Deputy Collector without hearing the petitioner, which has caused serious prejudice to the petitioner as the water course has been dug out from the fields of the petitioner. Respondents No. 2 and 3 have also failed to appreciate that the rights of the petitioner have been violated by digging the water course through his land without hearing him.

This petition is accordingly, accepted and the impugned orders are set aside. However, the Canal authorities would be at liberty to pass fresh orders after hearing both the parties.

The parties will appear before the Deputy Collector on or before 16.10.2006 for further proceedings.

(S.N.Aggarwal)
Judge

September 5, 2006.
chug